



New Jersey Office of the Attorney General
Division of Consumer Affairs
State Board of Respiratory Care
124 Halsey Street
P.O. Box 45031
Newark, NJ 07101

State Board of RESPIRATORY CARE

Volume 1

NEWSLETTER

Summer 2004

Chairman's Corner



On behalf of the Board, I am pleased to issue a newsletter to keep licensees informed of Board activities. Over the past two years the Board has addressed issues such as performance of pulmonary function and polysomnography testing by nonlicensed individuals. The Board also performed a sunset review of our regulations in May 2002. The revisions made at that time are provided, in summary, within this newsletter and the full text can be viewed online at <http://www.NJConsumerAffairs.com/medical/respcare.htm>.

The New Jersey State Society of Respiratory Care, the professional organization for therapists, has proposed an amendment to our statutes to require continuing education credits for license renewal. The Board supports this measure and believes that it will enhance the skill and competency of all therapists enabling them to keep pace with medical advances. This is in keeping with the Board's commitment to consumer safety as it ensures that only qualified therapists may practice in the State of New Jersey.

Dr. Jorge Gonzalez-Gomez and Caryn Peters, R.R.T., retired from the Board in 2002. We thank them for their hard work and dedication and wish them well in their future endeavors.

Everyone is welcome to attend the public session of the Board meeting held on the first Tuesday of each month. Please call 973-504-6485 for confirmation of meeting dates and location. The Board welcomes all letters, comments and inquiries. Your opinions are important to us.

Lastly, as you know, the licensure fee had been waived for the last two biennial renewal cycles. The Board is pleased to have achieved a 25% reduction in the \$160.00 fee for the 2004-2006 cycle. This biennial cycle licensees will pay the reduced fee of \$120.00

Very truly yours,

Kenneth Capek, M.P.A., R.R.T., C.H.T.
Chairman
State Board of Respiratory Care

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State Board of

RESPIRATORY CARE NEWSLETTER

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Message from the Executive Director

Dorcas K. O'Neal

The Board welcomes new staff members, David E. Wagreich and Frank C. Barto III, who joined the Board staff in 2003. Both have proven to be quick studies, enabling the timely processing of applications, responding to various inquiries and providing service to new applicants and current licensees.

There are currently 3,384 licensed respiratory care practitioners in the State of New Jersey. In its 12 years of existence, the Board has licensed 4,561 individuals.

The Board is proud to announce a 25% reduction in the licensure renewal fee for 2004-2006 for all current licensees. This credit is based upon budgetary efficiencies. Licensees will pay \$40.00 less, or \$120.00, this year for the licensure renewal fee, instead of the current \$160.00.

Discussions with Board Members May Jeopardize Board Matters

An applicant, licensee or attorney attempts on occasion to communicate with a member of the Board to discuss a pending application, complaint or disciplinary action.

Such *ex parte* communication may result in the contacted Board member not being able to participate in any discussion or vote on the application, petition or disciplinary action case.

Generally, the caller just wants to get a feel for how the Board will decide or confirm that the Board has all the facts. It is important to understand that Board members, when acting as individuals, have no authority to act on any application, make decisions, receive information on behalf of the Board or direct staff to take a specific action. The Board is authorized to act only during a lawfully convened meeting when a quorum is present.

A Board member who is contacted directly may be forced to disqualify himself or herself from participating in any discussion or vote on the matter.

If you have any questions on any matters before the Board or wish to obtain general information, please contact the Board's office. Although staff members cannot predict how the Board will decide, they can provide general and historical information, possible alternatives and information on

Notices from the
State Board of Respiratory
Care regarding :

Pulmonary Function Testing

In June 2002, The State Board of Respiratory Care issued a notice to all individuals performing pulmonary function testing in New Jersey, New York and Delaware, and to all hospitals in New Jersey, that on and after September 1, 2005, the Board will begin to take enforcement action against individuals it becomes aware are performing pulmonary function testing without a license to practice respiratory care, with certain exceptions which are included in the notice below.

Performance of pulmonary function testing is within the scope of respiratory care practice pursuant to N.J.S.A. 45:14E-3 which defines respiratory care as a health care specialty including:

....testing techniques to assist in diagnosis, monitoring, treatment and research, including but not necessarily limited to, the measurement of cardio-respiratory volumes, pressure and flow....

as further implemented by N.J.A.C. 13:44F-3.1, the State Board of Respiratory Care rule regarding the scope of practice.

In the past, the State Board of Respiratory Care has deferred enforcement of the statute regarding those individuals involved in performing such testing until full examination of the issue of the performance of pulmonary function testing

could take place. After carefully examining the issues, at this time the Board has determined that as a license to practice respiratory care is required in order to perform the scope of practice of respiratory therapy, which includes pulmonary function testing, and as the Board believes that unlicensed individuals may be continuing to perform such testing under certain circumstances, and as some of these individuals have been certified and registered as pulmonary function technologists, the Board believes it is appropriate to notify the pulmonary function community that although licensure is required, the continuation of such practice will be permitted during a transition period in order to enable individuals to obtain appropriate education and successfully complete Board testing requirements. Therefore, on and after September 1, 2005, the Board will begin to take enforcement action against individuals it becomes aware are performing pulmonary function testing without a license to practice respiratory care, with the exceptions indicated below:

1) Health care providers licensed by appropriate agencies of the State of New Jersey, who are practicing under the accepted standards of the licensee's profession, will continue to be able to perform diagnostic pulmonary function testing.

2) Properly trained individuals who do not possess a license to practice respiratory care nor a license in another health care field, will continue to be able to perform "basic screening spirometry" limited to peak flow, forced vital capacity (F.V.C.), slow vital capacity (S.V.C.) and maximum voluntary ventilation (M.V.V.) measurements.

Polysomnography Testing

In April 2003, the State Board of Respiratory Care issued a notice to the polysomnography community in New Jersey, New York and Delaware, to all sleep laboratories and to all hospitals in New Jersey, that on and after April 30, 2006, the Board will begin to take enforcement action against individuals it becomes aware are performing polysomnographic testing without a license to practice respiratory care, with certain exceptions which are included in the notice below.

Performance of polysomnography testing is within the scope of respiratory care practice pursuant to N.J.S.A. 45:14E-3.

In the performance of polysomnographic testing, there are procedures that fall within the scope of respiratory care practice pursuant to N.J.S.A. 45:14E-3 which defines respiratory care as a health care specialty including:

....use of medical gases, air and oxygen-administering apparatus....testing techniques to assist in diagnosis, monitoring, treatment and research, including but not necessarily limited to, the measurement of cardio-respiratory volumes, pressure and flow....

The statute is further implemented by N.J.A.C. 13:44F-3.1, the State Board of Respiratory Care rule regarding the scope of practice.

In the past, the State Board of Respiratory Care has deferred enforcement of the statute regarding those individuals involved in performing such testing until full examination of the issue of the performance of polysomnographic testing could take place. After carefully

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Changes in the Regulations

The State Board of Respiratory Care has reviewed its rules and has determined that the rules continue to be necessary, reasonable and proper for the purposes for which they were originally promulgated. The Board has amended the regulations to bring the rules up to current practice requirements and include minor technical amendments.

Subchapter 1 contains the purpose and scope of the rules and relevant definitions used in the chapter. The Board amended the definition of “trainee” to mean a student enrolled in a respiratory care training program accredited by the Committee on Accreditation for Respiratory Care (CoARC), or its successor.

The Board deleted some provisions, recodified others and reserved subchapter 2. The Board has determined that several sections in this subchapter, such as Board composition, Board meeting dates and the election of officers, are unnecessary. The remaining provisions have been moved to subchapter 8 as general provisions.

N.J.A.C. 13:44F-3.1 sets forth the scope of respiratory practice. The Board has amended the rule by adding hyperbaric oxygenation as a permissible testing technique.

Subchapter 4 concerns applicant qualifications and the Board-approved examination. N.J.A.C. 13:44F-4.1 details the eligibility requirements for licensure. The Board amended the rule and changed the accreditation of the training program from “the Joint Review Committee for Respiratory Care (JRCRCE)” to “the Committee on Accreditation for Respiratory Care (CoARC) or its successor.”

The Board amended N.J.A.C. 13:44F-4.2 to update the rule to the current examination practices of the National Board of Respiratory Care and provides that “Examinations may be taken at such times and places designated by the National Board of Respiratory Care.”

Subchapter 7 deals with the renewal of licenses. N.J.A.C. 13:44F-7.1 details the requirements for biennial license renewal. The Board adopted a new rule to conform with the the Uniform Enforcement Act, N.J.S.A. 45:1-7. The rule provides that: (a) All licenses issued by the Board shall be issued for a two-year biennial licensure period. A licensee who seeks renewal of the license shall submit a license renewal application and the license renewal fee set forth in N.J.A.C. 13:44F-8.1 prior to the expiration date of the license. (b) Renewal applications shall provide the applicant with the option of either active or inactive status. A licensee electing inactive status shall pay the inactive license fee set forth in N.J.A.C. 13:44F-8.1, and shall not engage in the practice of respiratory care. (c) If the licensee does not renew the license prior to its expiration date, the licensee may renew it within 30 days of its expiration by submitting a renewal application, a license renewal fee and a late fee, as set forth in N.J.A.C. 13:44F-8.1. (d) a license that is not renewed within 30 days of its expiration shall be automatically suspended. An individual who continues to practice with a suspended license shall be deemed to be engaged in unlicensed practice.

The Board also repealed N.J.A.C. 13:44F-7.2 and proposed a new rule detailing the requirements

for the change of license status from inactive to active, under a new heading entitled “Change of license status: inactive to active.” The new rule provides:

(a) A licensee, upon application to the Board, may change from inactive to active status upon payment of the renewal fee as set forth in N.J.A.C. 13:44F-8.1

(b). A licensee on inactive status for more than two years shall take a refresher course approved by the Board which demonstrates the licensee’s ability to practice respiratory care. If a licensee on inactive status in New Jersey has been practicing respiratory care in another state or jurisdiction, the licensee shall submit to the Board an affidavit that the licensee has been satisfactorily practicing respiratory care in another state or jurisdiction.

N.J.A.C. 13:44F-7.3, Reinstatement of suspended license, is a new rule which details the requirements for the reinstatement of a suspended license. The rule provides:

(a) An individual whose license has been automatically suspended for nonpayment of a biennial renewal fee pursuant to N.J.A.C. 13:44F-7.1(d) may be reinstated by the Board, provided the applicant otherwise qualifies for licensure pursuant to N.J.A.C. 13:44F-4.1, and submits a completed reinstatement application and one of the following to the Board:

1. A certification of licensure in good standing from any other state or jurisdiction in which the applicant has practiced respiratory care during the period the license was suspended in this State;

2. Certification by the applicant stating that he or she has practiced respiratory care in a state or jurisdiction which does not require certification or licensure, during the period the license was suspended in this State; or

3. Certification stating that the applicant has not practiced respiratory care, in this or any other jurisdiction during the period the license was suspended in this State.

(b) An individual who has practiced respiratory care in the manner described in (a) 1 or 2 above shall submit written verification, on a form provided by the Board, from all of the applicant's employers. The verification shall document dates of employment from the date the New Jersey license was suspended to the date of the application for reinstatement, and the name, address and telephone number of each employer.

(c) An individual whose license has been automatically suspended for a period between two and five years shall take a refresher course approved by the Board which demonstrates the licensee's ability to practice respiratory care. If a licensee in New Jersey has been practicing respiratory care in another state or jurisdiction, the licensee shall submit to the Board an affidavit that the licensee has been satisfactorily practicing respiratory care in the other state or jurisdiction.

(d) An individual whose license has been automatically suspended for a period of five or more years shall take an examination that has been determined by the Board to test the applicant's ability to practice respiratory care.

(e) Prior to reinstatement, an applicant shall pay a reinstatement fee and all past delinquent biennial renewal fees pursuant to N.J.A.C. 13:44F-8.1.

N.J.A.C. 13:44F-8.1 has been amended to reflect payment of a reinstatement fee after a license has been expired for 30 days. N.J.A.C. 13:44F-8.2 has been amended to clarify that licensees must keep records for seven years if the custody of the patient records is within the licensee's responsibility, and if the patient is a minor, the records shall be kept for an additional two years beyond the time the patient turns 18.

The Board encourages all licensees to review and be familiar with all of the Board's regulations in order to ensure compliance.

What you should know

Effective November 23, 2003, all respiratory care applicants must undergo a criminal history background check. All applicants must complete and return a Certification and Authorization form to the Board's office. Applicants must call Sagem Morpho, the company performing the background check, at 1-877-503-5981 (Monday through Saturday, 8:00 a.m. to 5:00 p.m) to schedule a time and place to have their fingerprints recorded electronically. Spanish-speaking operators are available upon request. The toll-free TTY telephone number, 1-800-673-0353, for hearing impaired applicants with a modem-equipped telephone, is also available.

Polysomnography Testing

examining the issue, at this time the Board has determined that a license to practice respiratory care is required in order to perform the services within the scope of practice of respiratory care, which includes, but is not limited to, noninvasive ventilatory support (CPAP/Bi-Level titration), and as the Board believes that unlicensed individuals may be performing such testing under certain circumstances, and as some of these individuals may have been registered by the Board of Registered Polysomnographic Technologists (B.R.P.T.) as

polysomnographic technologists, the Board believes it is appropriate to notify the polysomnography community that although licensure is required, the continuation of such practice will be permitted during a transition period in order to enable individuals to obtain the appropriate education and successfully complete Board testing requirements. Therefore, on and after April 30, 2006, the Board will begin to take enforcement action against individuals it becomes aware are performing procedures which fall within the scope of respiratory care

practice without a license to practice respiratory care, with the following exception:

1) Health care providers licensed by appropriate agencies of the State of New Jersey, provided such duties are consistent with the accepted standards of the member's profession and the member does not present himself or herself as a respiratory care practitioner.

Biennial Renewal

All licenses for respiratory care practitioners expired on March 31, 2004. Renewal applications were mailed approximately two months before the date of expiration. Licensees renewing no more than 30 days after the date of expiration are required to pay a late fee of \$100.00 plus the renewal fee of \$120.00. Beginning on May 1, 2004, any licensee who failed to renew is now required to pay a reinstatement fee of \$175.00 plus a \$120.00 renewal fee and will be subject to a criminal history background check.

Other Requirements For Inactive Status

If a licensee elects to be on inactive status for less than five years, all renewal fees plus a reinstatement fee must be paid to reinstate. If a licensee remains on inactive status for more than five years, he or she may be required to sit for a re-credentialing examination.

NOTE: If you have had a change of address since the last renewal, you must notify the Board's office in writing of the new address.

Disciplinary Actions

Since January 2003

Bernal, Edwin

Consent Order, 10/07/03

Respondent reprimanded for engaging in activity and being convicted of a crime relating adversely to the activity regulated by the Board in violation of N.J.S.A. 45:1-21f. Respondent was reprimanded for falsification of the biennial renewal application in which he failed to report the aforementioned then-pending criminal action in violation of N.J.S.A. 45:1-21b.

Respondent's license was suspended for a period of three months and he was assessed a civil penalty of \$250.00.

Burns, Jennifer

Consent Order, 06/27/03

Respondent reprimanded for unlicensed practice after expiration of her permanent license issued by the Board. Respondent was assessed a civil penalty of \$350.00.

Cunningham, Patricia

Consent Order, 6/27/03

Respondent reprimanded for aiding and abetting the unlicensed practice of respiratory care. Respondent was assessed a civil penalty of \$500.00.

Laird, Janice

Consent Order, 06/17/03

Respondent reprimanded for aiding and abetting the unlicensed practice of respiratory care. Respondent was assessed a civil penalty of \$500.00.

Stevenson, Virginia

Voluntary Surrender, 10/07/03

Respondent voluntarily surrendered her license due to substance abuse. The license was reinstated by Consent Order filed on March 22, 2004.

Williams, Michaelangelo

Consent Order, 03/05/03

Respondent pled guilty to and was convicted of the third-degree crime of having conspired to distribute a controlled dangerous substance (cocaine) with the intent to distribute. Respondent has undergone rehabilitation since his arrest 10 years ago.

Houda, Elkhoury

Consent Order, 04/15/04

Respondent was convicted in Federal District Court of conspiracy to commit credit card fraud on August 20, 2003. A Consent Order was entered into and filed on April 15, 2004, and the respondent received a temporary permit.

Michael, Settani

Consent Order 04/29/04

Respondent tested positive for cocaine. His license was suspended by Final Order filed on August 26, 2003. His license was reinstated by Consent Order filed on April 29, 2004.

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